

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a )  
Delaware corporation, )  
ORACLE USA, INC., a )  
Colorado corporation, and )  
ORACLE INTERNATIONAL )  
CORPORATION, a California )  
corporation, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 07-CV-1658 (PJH)  
 )  
SAP AG, a German )  
corporation, SAP AMERICA, )  
INC., a Delaware )  
corporation, TOMORROWNOW, )  
INC., a Texas corporation, )  
and DOES 1-50, inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF

PAUL K. MEYER

\_\_\_\_\_  
VOLUME 1; PAGES 1 - 331

WEDNESDAY, MAY 12, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-427362)

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10:44:36            21                      Q. Let's go in Exhibit 2017 to the First  
10:44:40            22                      Cause of Action, No. 1, Copyright Infringement. Do  
10:44:45            23                      you see that?  
10:44:46            24                      A. Yes.  
10:44:48            25                      Q. Can you explain what's included in the

10:44:50            1            damages remedy part?

10:44:54            2                      A.    Yes.    From my perspective, you have the --  
10:45:00            3            under Actual Damages, you have the value of use,  
10:45:02            4            which is basically the fair market value of the  
10:45:05            5            license, which is -- the amount there is the 2  
10:45:12            6            billion 156.    And that includes the PeopleSoft,  
10:45:17            7            Siebel, and the database calculations.

10:45:21            8                      And then the other measure of actual  
10:45:23            9            damages is lost profits.    And what's in there is  
10:45:27            10            the amount for OIC, which holds the copyrights,  
10:45:35            11            that's the 36 million to the 120.7 million.    And  
10:45:46            12            those are the numbers that are summarized there.

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10:55:48            12                    Q.    Okay.    I don't see any damage item on  
10:56:00            13                    Exhibit 2017 for infringer's profits against  
10:56:08            14                    TomorrowNow.  
10:56:08            15                                       Do you know what I'm referring to when I  
10:56:10            16                    say infringer's profits against TomorrowNow?  
10:56:13            17                                       A.    Yes, I believe in general sense, I do.  
10:56:16            18                                       Q.    As you sit here today, are you computing a  
10:56:17            19                    claim for damages of -- well, a claim of  
10:56:21            20                    infringer's profits against TomorrowNow?  
10:56:35            21                                       A.    I can't speak to the position of Oracle  
10:56:38            22                    and its lawyers.    From my perspective -- and this  
10:56:48            23                    will evolve as we talk about Mr. Clarke's report --  
10:56:51            24                    from my perspective, when it relates to the  
10:56:54            25                    infringer's profit side of the remedies, that from

10:57:03 1 the standpoint of the analysis, that TomorrowNow,  
10:57:09 2 as a separate entity within the SAP organization,  
10:57:12 3 does not have any profits to disgorge is sort of my  
10:57:17 4 position. But I don't want to be speaking on  
10:57:19 5 behalf of Oracle or its lawyers, so I'll defer to  
10:57:22 6 them on that issue.

10:57:23 7 Q. But let's stick with your position as you  
10:57:26 8 sit here today.

10:57:27 9 As you sit here today, you are not  
10:57:29 10 claiming that there are -- that TomorrowNow has  
10:57:34 11 received infringer's profits that should be  
10:57:36 12 disgorged. Is that true?

10:57:39 13 A. Setting aside the lawyers and the court,  
10:57:41 14 that would be my position from the standpoint of  
10:57:43 15 the finance and economic and accounting issues, the  
10:57:47 16 damage issues.

10:57:49 17 Q. Referring again to Exhibit 2017, I want to  
10:57:53 18 draw your attention to the right-hand column.  
10:57:55 19 Column No. 2, states: Oracle prevails on all  
10:58:02 20 causes, copyright, actual damages based on lost  
10:58:05 21 profits.

10:58:06 22 Do you see that?

10:58:06 23 A. Yes.

10:58:08 24 Q. And under that column in the first row,  
10:58:14 25 there is a line for actual damages, lost profits,

10:58:20 1 36 million to 120.7 million.

10:58:23 2 Do you see that?

10:58:23 3 A. Yes.

10:58:24 4 Q. Can you please explain those numbers?

10:58:26 5 A. Yes. That would be basically, if you  
10:58:32 6 looked at the OIC lost profits, they're 36 million,  
10:58:40 7 220.7 million. My understanding, that would be the  
10:58:43 8 amount that would be basically awarded or would  
10:58:49 9 apply to the lost profits part of the OIC claim for  
10:58:54 10 copyrights.

10:58:55 11 And so that's the amount that should be  
10:58:57 12 sort of the first number that sort of then -- we  
10:59:00 13 then say, how do the other causes leverage off of  
10:59:05 14 that, is there duplication or not, going below for  
10:59:09 15 the other causes.

10:59:09 16 Q. All right. With respect to that range of  
10:59:12 17 36 million to 120.7 million --

10:59:19 18 A. Yes.

10:59:19 19 Q. -- is there any number in between the two,  
10:59:21 20 or is it one or the other in your mind?

10:59:23 21 A. Well, at some level, from my perspective,  
10:59:26 22 I'll present it obviously on the lower end. That's  
10:59:29 23 through the point in time when TomorrowNow exits  
10:59:31 24 the market in basically October of 2008. And I say  
10:59:37 25 that in a general fashion. That's the 36 million.

10:59:39            1                                      The 120.7 million takes the position that  
10:59:44            2                                      because these maintenance contracts, once they're  
10:59:48            3                                      entered into, there's a long-term relationship, and  
10:59:51            4                                      once you leave a provider, it's hard to get the  
10:59:55            5                                      business back, the 120.7 relates to impacts out  
10:59:59            6                                      through basically 2015.

11:00:03           7                                      Obviously, this would be how I'd present  
11:00:05           8                                      it at trial. And to the extent that the trier of  
11:00:10           9                                      fact decided there was some in-between position,  
11:00:13           10                                     the jury or the judge could do that. But those are  
11:00:15           11                                     the two sort of extremes that I've sort of  
11:00:18           12                                     corralled or presented.

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11:39:56 6 MR. McDONELL: Q. With respect to what's  
11:39:58 7 been marked as Exhibit 2020, can you tell us the  
11:40:01 8 general purpose of the document?

11:40:06 9 A. Yes. The general purpose was, there's  
11:40:08 10 listed out, I believe it's 86 customers, and I've  
11:40:13 11 gone through and categorized them and provided  
11:40:17 12 information by column.

11:40:19 13 So I note whether they're a Safe Passage  
11:40:22 14 customer or not --

11:40:24 15 Q. And what is the significance of noting  
11:40:26 16 whether they're a Safe Passage customer?

11:40:28 17 A. Well, ultimately from my perspective if  
11:40:31 18 they're found to have become a Safe Passage  
11:40:33 19 customer, I would then leave them in the  
11:40:35 20 determination of the infringer's profits, so --

11:40:38 21 Q. And why would you do that?

11:40:40 22 A. Because from my perspective, it would  
11:40:41 23 relate to the marketing, solicitation, the business  
11:40:49 24 efforts that were taken by SAP in conjunction with  
11:40:53 25 TomorrowNow to improve and change and upgrade the

11:41:01 1 service that was being provided to one of these  
11:41:06 2 customers.

11:41:07 3 Q. What is the next column, the "Mr. Clarke  
11:41:10 4 Exclusion - Joined SAP Prior to TN; Product  
11:41:14 5 Extensions"?

11:41:17 6 A. Well, Mr. Clarke -- and we can go into his  
11:41:19 7 details later on -- he had a variety of categories  
11:41:22 8 that he used to -- to exclude customers that were  
11:41:27 9 in the 86. And they're in his report, and we can  
11:41:34 10 go look at that.

11:41:35 11 There was two categories that -- that I  
11:41:40 12 looked at and provided -- provided information to  
11:41:46 13 me that I adopted. And that was that if customers  
11:41:56 14 had been customers of SAP before TomorrowNow, and  
11:42:07 15 they did not become part of Safe Passage, I took  
11:42:15 16 them out.

11:42:16 17 So if they were older customers that were  
11:42:19 18 part of Safe Passage, I left them in. But if they  
11:42:21 19 were older customers and they did not become part  
11:42:24 20 of Safe Passage, I made that adjustment.

11:42:26 21 Q. And what about the second part of it, the  
11:42:30 22 product extensions?

11:42:31 23 A. And then Mr. Clarke did some analysis, and  
11:42:33 24 his position was that certain licenses had been  
11:42:35 25 extended. And there may be a variety of reasons

11:42:39 1 why he categorized it that way, but say the --  
11:42:42 2 there had been a license that was based on a  
11:42:44 3 certain amount of volume per seat or something, and  
11:42:49 4 that license was extended for some reason, he then  
11:42:51 5 said, well, exclude that customer.

11:42:53 6 From my perspective, if that was his  
11:42:56 7 finding and they were not part of Safe Passage,  
11:42:58 8 then I excluded them also. If they were part of  
11:43:01 9 Safe Passage, I left them in.

11:43:03 10 Q. Okay. So is it correct that you basically  
11:43:07 11 agreed with those two categories of Mr. Clarke,  
11:43:11 12 unless the customer was also designated somewhere  
11:43:13 13 as a Safe Passage customer?

11:43:17 14 A. You know, these were where we get into the  
11:43:20 15 situations that you have to describe.

11:43:24 16 From my perspective, I was provided this  
11:43:27 17 calculation by Mr. Clarke, I reviewed it, I made  
11:43:31 18 some adjustments that I felt were appropriate at  
11:43:34 19 the logic level. But at the same point in time,  
11:43:37 20 I'm sort of making them at a level that's grosser  
11:43:42 21 than I would want to make them out. So I have to  
11:43:45 22 sort of rely upon it a little bit, but then I say,  
11:43:48 23 by the way, I'm not going to back down from the  
11:43:51 24 importance that I see of Safe Passage, but I'll  
11:43:53 25 adopt these exclusions. But it doesn't mean that

11:43:55            1            I'm going to adopt the other ones. And so those  
11:43:58            2            were two that I thought -- if -- the way I  
11:44:02            3            described it was the way Mr. Clarke had analyzed  
11:44:04            4            it, I would accept.

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11:46:28            24                      Q.    So the 577 million is the total SAP  
11:46:33            25                      revenue that you are then considering for your

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11:46:36 1 disgorgement analysis. Is that true?

11:46:38 2 A. It would be that revenue --

11:46:43 3 Q. And then if you look at page 4 of 4 --

11:46:45 4 MS. HOUSE: I think he was not done.

11:46:47 5 THE WITNESS: Let me finish.

11:46:48 6 For the total disgorgement, it's that  
11:46:51 7 revenue plus the 577 plus the additional 126 on  
11:46:55 8 page 4. Maybe you were going to get there. So  
11:46:58 9 your total is -- let me back up.

11:47:01 10 Now, excuse me. The 577 is the amount  
11:47:03 11 that relates to the disgorgement revenue. I was  
11:47:08 12 showing you the reconciliation to the total. So it  
11:47:11 13 is 577.

11:47:12 14 MR. McDONELL: Q. Okay. So on page 4 of  
11:47:13 15 4 on Exhibit 2020, your infringer's profits  
11:47:17 16 calculation takes the 577 million, deducts or  
11:47:22 17 applies a 50 percent profit margin, and then it  
11:47:24 18 comes up with a total of 288 million. Is that  
11:47:26 19 right?

11:47:27 20 A. That's correct.

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13:59:51            4                    Q.    So you have measured the alleged lost  
13:59:55            5                    profits relating to the 358 TomorrowNow customers.  
14:00:00            6                    Correct?  
14:00:00            7                    A.    That's been measured.  
14:00:02            8                    Q.    You've also measured the alleged  
14:00:04            9                    infringer's profits relating both to those -- well,  
14:00:06            10                   relating to those customers as well.    Correct?  
14:00:09            11                   A.    To a subset of those customers, that's  
14:00:11            12                   correct.  
14:00:12            13                   Q.    Which is the up to 86 of those customers?  
14:00:14            14                   A.    The 86 list, that's correct.

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14:01:07	13	MR. McDONELL: Q. But you do know that
14:01:08	14	you're working with a list of a total of 86 joint
14:01:12	15	customers between TomorrowNow and SAP. Correct?
14:01:14	16	A. That's correct. I do need to mention one
14:01:23	17	thing just quickly, because I --

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I declare under penalty of perjury that  
the foregoing is true and correct. Subscribed at  
San Francisco, California, this 17 day of  
June, 2010.

Subject to the attached errata

Paul K. Meyer

PAUL K. MEYER

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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript  was [ ] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: May 19, 2010  
Holly Thuman  
HOLLY THUMAN, CSR